

**Condensed Transcript**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

**IN RE FORCE PROTECTION, INC.  
SECURITIES LITIGATION**

**Consolidated  
Civil Action  
No. 2:08-cv-845-CWH**

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**CONFIDENTIAL VIDEOTAPED DEPOSITION OF**

**DAVID JAGER**

**February 12, 2010  
10:10 a.m.**

**Suite 2400  
131 South Dearborn Street  
Chicago, IL.**

**Anne E. Fogarty, Certified Shorthand Reporter**



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| <p style="text-align: center;">33</p> <p>1 and answered.</p> <p>2 BY MR. LEE:</p> <p>3 Q. You can answer the question.</p> <p>4 A. I don't recall a specific date. There</p> <p>5 was an intervening call.</p> <p>6 Q. Was it during the month of January?</p> <p>7 MS. SMOLLAR: Objection.</p> <p>8 You can answer.</p> <p>9 BY THE WITNESS:</p> <p>10 A. It could have been January. I don't</p> <p>11 remember it specifically.</p> <p>12 BY MR. LEE:</p> <p>13 Q. Do you have any recollection as to how</p> <p>14 long ago that call was relative to today's date?</p> <p>15 MS. SMOLLAR: Objection.</p> <p>16 You can answer.</p> <p>17 BY MR. LEE:</p> <p>18 Q. You can always answer unless she tells</p> <p>19 you not to. She'll be specific.</p> <p>20 A. Okay.</p> <p>21 So I believe it was in 2010.</p> <p>22 Q. Okay. Who participated in that</p> <p>23 telephone call in 2010?</p> <p>24 A. Jason Cowart. That was it.</p>                                                                                     | <p style="text-align: center;">35</p> <p>1 A. I think the answer to that is yes. I</p> <p>2 signed some documents and we exchanged them.</p> <p>3 Q. Okay. Do you know Jim Capasso?</p> <p>4 A. That name is familiar. I don't know him</p> <p>5 personally.</p> <p>6 Q. You've never met personally with Jim</p> <p>7 Capasso?</p> <p>8 A. No.</p> <p>9 Q. Have you ever spoken on the phone with</p> <p>10 Jim Capasso?</p> <p>11 A. Not directly. I don't know if he was on</p> <p>12 a conference call when we were there. I don't</p> <p>13 recall specifically.</p> <p>14 Q. Okay. Have you ever met in person with</p> <p>15 any person that you recognize as a representative of</p> <p>16 an entity called the Laborers' Annuity and Benefit</p> <p>17 Fund of Chicago?</p> <p>18 A. No.</p> <p>19 Q. Ever spoken on the phone with such a</p> <p>20 person?</p> <p>21 A. No direct communication. If they were</p> <p>22 on a conference call, I didn't know about it.</p> <p>23 Q. Okay.</p> <p>24 A. I don't know.</p>                                                                                                                                                         |
| <p style="text-align: center;">34</p> <p>1 Q. Just you and Jason Cowart?</p> <p>2 A. Yes.</p> <p>3 Q. And I just want to be clear. Are you</p> <p>4 saying those are the only two people that you</p> <p>5 remember being on the call or you're certain that</p> <p>6 the only two people on the call were yourself and</p> <p>7 Mr. Cowart?</p> <p>8 MS. SMOLLAR: Objection.</p> <p>9 BY THE WITNESS:</p> <p>10 A. So I believe we were the only two on the</p> <p>11 line.</p> <p>12 BY MR. LEE:</p> <p>13 Q. Okay. And prior to today those are the</p> <p>14 only two telephone calls you can remember that you</p> <p>15 participated in with members of the Pomerantz firm?</p> <p>16 MS. SMOLLAR: Objection.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Those are two that I recall. I'm not</p> <p>19 certain if there was another time in there that we</p> <p>20 spoke.</p> <p>21 BY MR. LEE:</p> <p>22 Q. Okay.</p> <p>23 Have you ever had any written</p> <p>24 correspondence with lawyers at the Pomerantz firm?</p> | <p style="text-align: center;">36</p> <p>1 Q. Do you know Gary Trautman?</p> <p>2 A. Yes. Not personally, I know the name.</p> <p>3 Q. Where do you know the name from?</p> <p>4 A. He's part of the group, the lead</p> <p>5 plaintiff.</p> <p>6 Q. Have you ever met with Mr. Trautman in</p> <p>7 person?</p> <p>8 A. No.</p> <p>9 Q. Have you ever spoken directly on the</p> <p>10 phone to Mr. Trautman?</p> <p>11 A. Not directly. Again, I don't know if he</p> <p>12 was on a conference call.</p> <p>13 Q. I'm not going to mark this again. This</p> <p>14 was marked yesterday as Poulikakos 2. Or not</p> <p>15 yesterday; rather, this was marked on the Panteli</p> <p>16 Poulikakos deposition on February 10 as Poulikakos</p> <p>17 2. It is a document styled as Joint Declaration in</p> <p>18 Support of the Chicago Laborers Group's Motion for</p> <p>19 Appointment as Lead Plaintiff and for Approval of</p> <p>20 its Selection of Lead Counsel.</p> <p>21 Mr. Jager, please take the time you need</p> <p>22 to look through the document. We'll get to specific</p> <p>23 questions, but I just want to see first if you</p> <p>24 recognize the document?</p> |



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| <p style="text-align: center;">41</p> <p>1 teleconference to discuss the status and management<br/>2 of this action." Do you see that, sir?<br/>3 A. Yes.<br/>4 Q. Do you recall participating in that May<br/>5 27, 2008, telephone conference?<br/>6 MS. SMOLLAR: Objection.<br/>7 BY THE WITNESS:<br/>8 A. No.<br/>9 BY MR. LEE:<br/>10 Q. The next sentence reads: "Pursuant to<br/>11 that discussion, we have agreed to jointly<br/>12 participate in conference calls with counsel as<br/>13 necessary, and in any event at least quarterly in<br/>14 addition to regular written updates." Do you see<br/>15 that?<br/>16 A. Yes.<br/>17 Q. When you signed this document on May 27,<br/>18 2008, Mr. Jager, was it your understanding that --<br/>19 well, strike that.<br/>20 When you signed this document, had you<br/>21 agreed to participate in conference calls with<br/>22 counsel as necessary, and in any event at least<br/>23 quarterly?<br/>24 MS. SMOLLAR: Objection; lack of foundation,</p>                                                | <p style="text-align: center;">43</p> <p>1 necessary but you weren't committing that you would<br/>2 participate at least quarterly; is that correct?<br/>3 MS. SMOLLAR: Objection.<br/>4 You can answer.<br/>5 BY THE WITNESS:<br/>6 Q. Me personally my agreement was not<br/>7 necessarily quarterly.<br/>8 BY MR. LEE:<br/>9 Q. Okay.<br/>10 MS. SMOLLAR: David, are you okay? Do you<br/>11 need a break? We've been going a little over an<br/>12 hour now, so.<br/>13 THE WITNESS: I'm okay.<br/>14 MS. SMOLLAR: Okay. Let's go another 15 or so<br/>15 minutes and then take a break.<br/>16 MR. LEE: Sure, that's fine. We can take a<br/>17 break any time today, sir.<br/>18 THE WITNESS: Okay. Thank you.<br/>19 BY MR. LEE:<br/>20 Q. All right. Still looking at Paragraph 9<br/>21 of this document, Mr. Jager, and the same sentence<br/>22 that we've been focusing on, the end of the sentence<br/>23 refers to "regular written updates." Do you see<br/>24 that?</p> |
| <p style="text-align: center;">42</p> <p>1 misleading.<br/>2 BY MR. LEE:<br/>3 Q. You can answer the question.<br/>4 A. So I agreed to meet as necessary with<br/>5 counsel. And I also understood that I wasn't<br/>6 initially necessary to participate in discussion<br/>7 with counsel unless specifically requested, or if I<br/>8 was interested in it I was welcome to participate in<br/>9 initial contact.<br/>10 Q. What I'm trying to understand is after<br/>11 May 27, 2008, did you agree to jointly participate<br/>12 in conference calls with counsel as necessary, and<br/>13 in any event at least quarterly?<br/>14 MS. SMOLLAR: Objection; lack of foundation,<br/>15 form, misleading.<br/>16 You can answer.<br/>17 BY THE WITNESS:<br/>18 A. Me personally I didn't agree -- I agreed<br/>19 to be there as necessary but not necessarily<br/>20 quarterly.<br/>21 BY MR. LEE:<br/>22 Q. Okay. So at the time you signed this<br/>23 document your understanding was that you would<br/>24 participate in calls, meetings, whatever, as</p> | <p style="text-align: center;">44</p> <p>1 A. Yes.<br/>2 Q. Since May 27, 2008, have you received<br/>3 regular written updates regarding this lawsuit?<br/>4 MS. SMOLLAR: Objection.<br/>5 You can answer.<br/>6 BY THE WITNESS:<br/>7 A. So as there are developments in the case<br/>8 I get copies of the documents that are involved.<br/>9 BY MR. LEE:<br/>10 Q. Okay. Can you think of anything else in<br/>11 the way of regular written updates that you've<br/>12 received?<br/>13 MS. SMOLLAR: Objection.<br/>14 BY THE WITNESS:<br/>15 A. No.<br/>16 BY MR. LEE:<br/>17 Q. Do you keep a file relating to this<br/>18 lawsuit?<br/>19 A. I have some saved e-mails, that's all.<br/>20 Q. No physical hard paper document file?<br/>21 A. No.<br/>22 Q. Are the e-mails e-mails between you and<br/>23 your attorneys in this lawsuit?<br/>24 A. Some.</p>                                                                                                                   |



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| <p style="text-align: center;">49</p> <p>1 MS. SMOLLAR: Objection.</p> <p>2 BY THE WITNESS:</p> <p>3 A. If I weren't asked to?</p> <p>4 BY MR. LEE:</p> <p>5 Q. Let me ask you a different question.</p> <p>6 As you sit here today can you think of</p> <p>7 any reason other than being asked to do so by your</p> <p>8 attorneys that you would participate in a court</p> <p>9 appearance in this case?</p> <p>10 MS. SMOLLAR: Objection, but you can answer.</p> <p>11 BY THE WITNESS:</p> <p>12 A. Well, as lead plaintiff if I've had some</p> <p>13 disagreement in the process of litigation or</p> <p>14 something like that, I might engage another source</p> <p>15 to arrange something like that. But I have no</p> <p>16 indication that there is any problems at this point</p> <p>17 and I don't see a need for that.</p> <p>18 BY MR. LEE:</p> <p>19 Q. Okay. Let's look at Paragraph 10. And</p> <p>20 just at the outset, this paragraph has three</p> <p>21 sentences that have "we," talking about what, quote,</p> <p>22 we understand or believe or plan to do. Did you</p> <p>23 understand when you signed this document that you</p> <p>24 were joining in the representations made in</p> | <p style="text-align: center;">51</p> <p>1 adequate to represent the interests of the class,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. At the time you signed this document</p> <p>5 what was the basis for that belief?</p> <p>6 A. So it's based on recommendations from</p> <p>7 Panteli Poulidakos.</p> <p>8 Q. Okay. Other than those representations</p> <p>9 from Panteli Poulidakos did you do anything</p> <p>10 personally to satisfy yourself that Berman DeValerio</p> <p>11 was highly qualified and adequate to represent the</p> <p>12 interests of the class?</p> <p>13 MS. SMOLLAR: Objection, mischaracterization</p> <p>14 of prior testimony.</p> <p>15 BY THE WITNESS:</p> <p>16 Q. No, I trusted Panteli's opinion in this</p> <p>17 regard.</p> <p>18 BY MR. LEE:</p> <p>19 Q. Okay. And other than -- other than</p> <p>20 getting Panteli's opinions, did you do anything</p> <p>21 prior to signing this document to satisfy yourself</p> <p>22 that the Pomerantz law firm was highly qualified and</p> <p>23 adequate to represent the interests of the class?</p> <p>24 A. Nothing more than consulting with</p>                                                             |
| <p style="text-align: center;">50</p> <p>1 Paragraph 10?</p> <p>2 A. Yes.</p> <p>3 Q. So the first sentence reads, "We</p> <p>4 understand that Lead Plaintiffs' role under the</p> <p>5 PSLRA is to select and retain Lead Counsel and to</p> <p>6 supervise the prosecution of lawsuit." Do you see</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. What is the PSLRA?</p> <p>10 MS. SMOLLAR: Objection.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I assume it's the governing body that --</p> <p>13 I understand it to be the governing body that</p> <p>14 provides the process in which -- the process</p> <p>15 required to proceed with these proceedings.</p> <p>16 BY MR. LEE:</p> <p>17 Q. Okay. The next sentence says, "We</p> <p>18 believe that Berman DeValerio and Pomerantz are</p> <p>19 highly qualified and adequate to represent the</p> <p>20 interests of the Class." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. At the time you signed this document on</p> <p>23 May 27, 2008, you held the belief that Berman</p> <p>24 DeValerio and Pomerantz are highly qualified and</p>                                                                                                                 | <p style="text-align: center;">52</p> <p>1 Panteli Poulidakos.</p> <p>2 Q. Okay. The last sentence of Paragraph 10</p> <p>3 reads, "Moreover, we are committed to overseeing</p> <p>4 Co-Lead Counsel's prosecution of this litigation, in</p> <p>5 order to ensure that the matter is handled</p> <p>6 efficiently and without duplication of work." Do</p> <p>7 you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What have you personally done to ensure</p> <p>10 that this matter is handled efficiently?</p> <p>11 A. Well, I review updates and developments</p> <p>12 in the case when they're available and make sure</p> <p>13 that the information that I've been presented makes</p> <p>14 sense and is coherent.</p> <p>15 Q. Mr. Jager, still looking at this same</p> <p>16 document, I'd like you to turn to the page that at</p> <p>17 the top is marked Page 9 of 18, and specifically I'd</p> <p>18 like to direct your attention to Paragraph 6, which</p> <p>19 starts on that page and continues on to the next</p> <p>20 page. Please just take a second to read over that</p> <p>21 paragraph.</p> <p>22 (WHEREUPON, a short pause was had.)</p> <p>23 BY THE WITNESS:</p> <p>24 Q. Okay.</p> |



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| <p style="text-align: center;">101</p> <p>1 A. So I remember the ones I imagined, but I<br/>2 didn't actually search locations that could contain<br/>3 documents like that because I didn't believe that I<br/>4 retained any information during the class period.<br/>5 There is a document cutoff date, prior to the<br/>6 document cutoff date, so as I searched my soul I<br/>7 couldn't find anything and I didn't produce any<br/>8 documents in response to this request.<br/>9 Q. Okay. What was the document cutoff date<br/>10 that you just mentioned?<br/>11 A. I don't recall what it was specifically.<br/>12 Is it in here?<br/>13 MS. SMOLLAR: I'm just going to object here.<br/>14 The question --<br/>15 BY MR. LEE:<br/>16 Q. It's not in here.<br/>17 MS. SMOLLAR: I just want to object to your<br/>18 question on the witness with respect to what is the<br/>19 document cutoff date because I think that we have<br/>20 taken a position about what documents in terms of<br/>21 dates would be relevant to defendants and we've told<br/>22 the defendants our position and produced documents<br/>23 pursuant to that date.<br/>24 MR. LEE: Let me just look at what it is you</p>      | <p style="text-align: center;">103</p> <p>1 Okay. I read that as a representation<br/>2 that documents that date from a time after March 14,<br/>3 2008, yet refer to class period events may still be<br/>4 produced.<br/>5 MS. SMOLLAR: Not the documents, though, that<br/>6 were created after the case has been filed, even if<br/>7 they refer to.<br/>8 MR. LEE: Well, he's testified that there is a<br/>9 cutoff date. I just want to find out what he thinks<br/>10 it is.<br/>11 MS. SMOLLAR: Okay. But I'm just saying I<br/>12 think the position we took is we didn't produce<br/>13 documents that were created after the date of the<br/>14 first filing in this case. But you can ask --<br/>15 MR. LEE: Is that set forth in something that<br/>16 you've provided to us?<br/>17 MS. SMOLLAR: Yes, it is. And I believe it --<br/>18 I don't know if it was oral or a letter from Jason<br/>19 Cowart or --<br/>20 MR. DAHLSTROM: You can ask him the questions<br/>21 on the cutoff. We can deal with this after.<br/>22 MR. LEE: Yeah, we'll take this up later.<br/>23 MS. SMOLLAR: Yeah, that's fine.<br/>24 BY MR. LEE:</p>                                                    |
| <p style="text-align: center;">102</p> <p>1 did tell us --<br/>2 MS. SMOLLAR: Okay.<br/>3 MR. LEE: -- again.<br/>4 (WHEREUPON, a short pause was had.)<br/>5 MR. LEE: Counsel, I'm reading from the Lead<br/>6 Plaintiff's Responses and Objections to Defendants'<br/>7 First Set of Request for Production of Documents.<br/>8 Let me get you a copy.<br/>9 (WHEREUPON, the document was tendered<br/>10 to counsel.)<br/>11 MR. LEE: I'm looking at Page 7 of the<br/>12 document under Paragraph 5 of your -- of the Lead<br/>13 Plaintiffs' Objections to Defendant's Instructions.<br/>14 The very last sentence of that paragraph reads, "As<br/>15 to the governing time period, unless expressly<br/>16 stated otherwise in any specific response, lead<br/>17 plaintiffs will produce nonprivileged responsive<br/>18 documents prepared, generated or published during<br/>19 the time period from January 1, 2006, through<br/>20 March 14, 2008, and nonprivileged responsive<br/>21 documents prepared, generated or published after the<br/>22 relevant period that relate to both -- relate both<br/>23 to events during the relevant period and the claims<br/>24 or defenses in this action."</p> | <p style="text-align: center;">104</p> <p>1 Q. So the question, Mr. Jager, is you<br/>2 testified you understood there to be a cutoff date<br/>3 as to documents you might collect. What, as you sit<br/>4 here today, is your understanding of what that date<br/>5 is?<br/>6 A. So I have -- so I get updates on<br/>7 progress in this case. Any new filings, any new<br/>8 developments I get copies of documents. And as I<br/>9 understand it I wasn't required to provide those<br/>10 documents again. And that was, you know, most of<br/>11 the type of stuff that I could produce, I could<br/>12 physically produce for you, and it wasn't required.<br/>13 Q. So you understand that you didn't<br/>14 have -- you were under no obligation to search for<br/>15 any documents that postdated what, your appearance<br/>16 in this lawsuit?<br/>17 MS. SMOLLAR: Objection.<br/>18 BY THE WITNESS:<br/>19 A. No. No, it was more current documents<br/>20 that communications between -- recent communications<br/>21 between the groups and copies of these documents<br/>22 that we're reviewing here I didn't need to produce<br/>23 those is my understanding.<br/>24 BY MR. LEE:</p> |



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